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Supreme Court of the United States

OCTOBER TERM, 1930.

NO. [illegible] 7

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 8

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 9

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 10

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 11

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 12

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 13

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR PETITIONERS.

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Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 689.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 690.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 691.

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR PETITIONERS.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Pennsylvania in these seven cases is officially reported in 302 Pa. 179. It will be found on page 602 *et seq.* of the Record. Supplemental opinion and final order denying a rehearing will be found on page 620 of the Record.

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, c 229, Section 1, 43 Stat. 937.

2. The date of the original decree of the Supreme Court of Pennsylvania was November 24, 1930. A petition for reargument (R. 605) was filed in the Supreme Court of Pennsylvania on December 2, 1930; on December 8, 1930, the Supreme Court of Pennsylvania entered an order (R. 620) refusing reargument; and on December 16, 1930, a modifying order and supplemental opinion (R. 620) refusing reargument was entered. Petition for writs of *certiorari* was filed in this Court on January 31, 1931. *Certiorari* was granted March 9, 1931 (R. 621 *et seq.*

3. One of the grounds of petitioners' petition for reargument to the Supreme Court of Pennsylvania was that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 615); and the final order of the Supreme Court of Pennsylvania (R. 620) refuses the reargument upon the ground that in the opinion of the Court the plan of assessment in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

4. *Sioux City Bridge Company v Dakota County, Nebraska,* 260 U. S. 441, is believed to sustain the jurisdiction of this Court to review these cases by *certiorari. Leigh v. Green,* 193 U. S. 79, is believed to sustain the jurisdiction of this Court to consider the federal question, even though not raised until petition for reargument in the Supreme Court of Pennsylvania.

III.

Statement of the Case.

The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Although the facts in connection with each of the assessments in the seven cases are necessarily somewhat different from those involved in each of the other assessments, the plan of assessment pursuant to which the Board of Revision made the assessments in question, and against which our complaint is directed, is the same in all of the cases. (See opinion, R. 602).

We shall discuss the plan herein with particular reference to Cumberland Coal Company's appeal from its assessment in Cumberland Township, for the reason that in that case the unconstitutionality of the plan of assessment is perhaps more strikingly apparent, and the discrimination more flagrant, than that involved in the other companion cases.

A clear conception of these cases will be aided by examining petitioners' Exhibit B appearing at page 265 of the Record, and a copy of which is, for convenience, attached to this brief. This exhibit is a map of Greene County, and shows in circles the assessments in each township, and in colors the property of petitioners. The exhibit was found by the trial court to be substantially correct (Finding 35, R. 297).

Greene County, Pennsylvania, lies in the southwestern corner of the State, and has as its eastern boundary the Monongahela River. The Pittsburgh or River Vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, and is, for the

purposes of these cases, practically of the same character, quality and thickness (Finding 7, R. 290). The coal on the river front is, by reason of its proximity to transportation, more valuable than the back coal, and the value of the coal throughout the County decreases as you go west from the Monongahela River and leave the means of transportation (Findings 28, 29, 30, R. 295, 296).

There is a marked difference in development between that portion of the Pittsburgh or River Vein of coal in Greene County which lies within three miles of the Monongahela River, and that part which lies further back. In the three-mile strip along the river in the various townships, major mining operations have been and are being carried on (Finding 8, R. 290; Finding 14, R. 292); and the resultant increased population requires the maintenance within this three mile strip, of improved schools and roads such as do not exist back of the three mile limit (R. 38, 39).

Cumberland Township, Greene County, lies along the eastern boundary of the County and extends from the Monongahela River on the east, westwardly a distance of substantially nine miles, as appears by the map, petitioners' Exhibit B. Cumberland Coal Company is the owner of 9237 acres of the Pittsburgh or River Vein of coal in Cumberland Township (R. 289) shown in yellow on the map, Exhibit B. There is one tract of 132 acres situate in the northeastern part of the Township, and another tract of 203 acres situate in the southeastern part of the Township near the river, about which no complaint is made, so that the appeal of Cumberland Coal Company in Cumberland Township may be considered as dealing only with the remaining 8902 acres. This unopened (R. 38) virgin coal extends from a point distant 2¼ miles westwardly from the Monongahela River and runs back to the western line of Cum-

berland Township, a distance of about nine miles from the river. (Finding 10, R. 291). It is shown in yellow on map, Exhibit B.

The statutes of Pennsylvania provide for the triennial assessment (see Appendix, section "B"), at its "actual value" (see Appendix, section "C"), of all real estate in each county for purposes of taxation (see Appendix, section "A"), and constitute the County Commissioners of each county a "Board of Revision" to revise, correct and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold" (see Appendix, section "D"). Upon the valuations so made county taxes are levied throughout each county and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River vein of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 24, 25, 35; and see map Exhibit B, R. 265, and attached hereto, and Finding 35, R. 297), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 292; Finding 30, R. 296).

Thus in Cumberland Township the Board of Revision valued the Pittsburgh or River vein of coal throughout the entire Township at $260.00 per acre (with the exception of 250 acres or less surrounding actual operations which were uniformly assessed at $500.00 per acre) (Finding 11, R. 291) **. This plan was pursued in the face of the following admitted facts found by the trial court:

Finding 14 (R. 292):

"The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the balance of the coal in said township from the three mile line to the rear of the township, and nearly all of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles." (*i. e.,* nine miles from the river)

Finding 30 (R. 296):

"The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the

**In so doing the Board purported to assess the coal upon a basis of fifty per cent. of actual value, the ratio generally fixed throughout the County (Findings 18, 20; R. 293, 294).

Monongahela River and extending back a distance of three * miles, or six * miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly."

Conclusion of Law No. 7 (R. 301):

"7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township and is not of the same value, and is not quite so accessible to market. The coal along the river and for a considerable area (much more than 250 acres) around the operating plants is worth $1000.00 per acre, and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust."

It was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout each township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence. Thus Mr. J. N. Scott, Chairman of the Board, testified (R. 171):

"Q. What, in your opinion, is the fair market value of the Pittsburgh or River vein of coal

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*This coal of appellant really extends back six miles, or nine miles from the river. (See Finding 10, R. 291; Finding 14, R. 292; and map, Exhibit B).

in Cumberland Township per acre at public sale after due and public notice?

"A. Not less than $600.00.

"Q. That testimony of yours extends to the whole township, whether it abuts upon the river or extends eight miles back to the Cumberland Township line?

"A. That is the average of the Township."

(Record p. 174):

"Q. Now, Mr. Scott, I am trying to get at what purchasers would want and what would enter their mind in making purchases of coal. You have talked about the average price of $600.00. Will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

"A. The front coal might get very valuable. It certainly would not be less than $1,000.00. It would depend on circumstances. By carrying the front at $1,000.00 and the back at $500.00, it would get an average of $750.00."

Similarly Mr. Paul Debolt, another of the Commissioners being on the stand (R. 180):

"Q. What, in your opinion, Mr. Debolt, is the market value of the Pittsburgh or River vein of coal in Cumberland Township at public sale after due public notice?

"A. I think at least $600.00 is the average price."

(Record p. 182):

"Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland Township, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1,000.00 an acre.
"Q. The average of the township $600.00 an acre?
"A. Yes."

Of course the averaging of the value of the coal lands of any particular owner in a township would be a highly proper system of assessment, but to average the coal of all the different owners in the township, and assess them all at this same average value is manifestly discriminatory.

We have thus far discussed the plan of assessment involved in these cases with particular reference to the appeal of petitioner, Cumberland Coal Company, from its assessment in Cumberland Township. In view of the fact, as stated by the Supreme Court of Pennsylvania in its opinion, that "These seven appeals * * * involve, when reduced to final analysis, but one question" (R. 602), there is manifestly no need to burden this Honorable Court with a detailed exposition of the facts in each of the other six cases, and hence we need add only a few general observations with regard to the assessments in the other townships involved in the remaining cases.

In pursuance of the plan of assessment hereinbefore referred to on page 5., the Board of Revision assessed all of the Pittsburgh or River vein of coal throughout Perry Township at the uniform value of $110.00 per acre (R. 25), and throughout Wayne Township at the uniform value of $85.00 per acre (R. 25). This plan was pursued despite the fact that the Court found, and it is not disputed, that the coal in certain portions of each of these Townships was more valuable than the coal in other portions. The pertinent part of the Finding in question (Finding 15, R. 360) reads as follows:

> "While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said townships, the assessment based on Township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value."

The coal holdings of petitioners in Perry and Wayne Townships are in the less valuable portions of these Townships (See Exhibit B attached to this brief). They are as follows: Cumberland Coal Company, in Perry Township, 3126 acres (Finding 2, R. 356); Cumberland Coal Company, in Wayne Township, 6012 acres (Finding 2, R. 391); Henry A. Phillips, in Wayne Township, 6900.7 acres (Finding 2, R. 415); Piedmont Coal Company, in Wayne Township, 3955.2 acres (Finding 2, R. 438); Greene County Coal Company, in Perry Township, 3207 acres (Finding 2, R. 462).

In further pursuance of the aforesaid plan, the Board of Revision assessed all of the Pittsburgh or River vein of coal in Greene Township at $225.00 per acre (R. 24) despite the fact that the evidence shows that the Greene Township coal is worth substantially the same as the adjoining coal in the rear of Cumberland Township, to which we have already referred (R. 180, 181, 118), and only about one-half as much as the coal in Monongahela Township (R. 77, 105, 128) which the Board of Revision assessed uniformly at $300.00 per acre (R. 296). Mr. Scott, Chairman of the Board, testified he considered the back coal in Cumberland Township worth

$500.00 an acre (R. 175) and the Greene Township coal worth $450.00 an acre (R. 176). Mr. Debolt, another member of the Board, confirmed these values, and testified (R. 181):

> "Well, Greene Township I would consider worth as much as the back end of Cumberland."

The findings of the Trial Court recognize the propriety of these views of the Board as to the value of the Greene Township Coal. The Court found that the adjoining coal in the rear of Cumberland Township, of the same character, quality and thickness (Finding 7, R. 290), and, like the Greene Township coal, situated more than three miles from the river (see Exhibit B attached hereto), was not worth one-half as much as the coal lying along the river and within the three mile limit (Findings 14 and 30, quoted p. 6 of this brief). Again, the Court found (Finding 32 in Cumberland Township Appeal, R. 296) that the coal in Monongahela Township, which was assessed at $300.00 per acre, "is worth $500.00 more per acre than the coal in the rear end of Cumberland Township belonging to the appellant Company."

Petitioner, Cumberland Coal Company, is the owner of 11,956.6 acres of coal in Greene Township, which coal, it contends, by reason of the above facts, was assessed at a substantially higher percentage of its actual value than the coal of other owners in Monongahela Township and the front portion of Cumberland Township.

In pursuance of their rights under the Pennsylvania statutes (see Appendix Section "E"), petitioners appealed from the assessments of their coal in the respective townships, as determined by the Board of Revision, to the Court of Common Pleas of Greene County

alleging as the basis for their appeals that (R. 287, 322, 354, 389, 413, 436, 460):

> "(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.
>
> "(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed 'active coal') at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene."

Upon hearing, the Court of Common Pleas of Greene County dismissed all of the appeals. From these decisions petitioners appealed (under Act quoted in Appendix "F") to the Supreme Court of Pennsylvania, attacking the assessments primarily upon the ground that the plan of assessment followed by the Board of Revision is unfair, unjust, discriminatory, and in contravention of Section 1 of Article IX of the Constitution of Pennsylvania, which provides:

> "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the au-

thority levying the tax, and shall be levied and collected under general laws."

On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 605) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 603), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county (R. 603). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 604):

> "The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 605) upon the ground, *inter alia,* that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 615); and on December 16, 1930, the Court entered the following order (R. 620):

> "And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused."
>
> "PER CURIAM."

IV.

Specification of Errors to be Urged.

1. The Supreme Court of Pennsylvania erred in finding and holding that the plan of assessment involved in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Pennsylvania erred in finding and holding that Township Assessors and County Commissioners sitting as a Board of Revision may assess all bituminous coal in the Pittsburgh or River vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from river or rail transportation, and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township, and that the coal fronting on the river and railroads possesses a value twice that of coal lying back from the river and extending to a distance of nine or ten miles.

3. The Supreme Court of Pennsylvania erred in finding and holding that a landowner may not challenge his individual assessment by showing systematic undervaluations of other properties in the taxing district.

4. The Supreme Court of Pennsylvania erred in finding and holding that the sole basis of redress of a landowner must be that his individual property is assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county.

V.

Summary of Argument.

A. The plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners.

B. The assessments in these cases, and the decision of the Supreme Court of Pennsylvania sustaining them, contravene the rights of petitioners under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, as interpreted by this Court.

VI.

Argument.

Point A.

THE PLAN OF ASSESSMENT IN THESE CASES INVOLVES AN ARBITRARY, INTENTIONAL AND SYSTEMATIC DISCRIMINATION AS BETWEEN DIFFERENT COAL OWNERS.

In Sunday Lake Iron Company v. Wakefield Township, 247 U. S. 350, 352, this Court held that:—

> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value

of his property. *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35, 37, 52 L. ed. 7_, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

This statement is quoted with approval in *Sioux City Bridge Company v. Dakota County, Neb.*, 260 U. S. 441, 445. Analogous cases are *Greene v. Louisville and Interurban R. Co.*, 244 U. S. 499, 516-518; *Cummings v. Merchants Nat. Bank*, 101 U. S. 153, 160; *Taylor v. Louisville & N. R. Co.*, 88 Fed. 350, 364, 365, 372, 374; *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 452; *Washington Water Power Co. v. Kootenai County*, 270 Fed. 269, 374.

In the present cases the taxing authorities applied a systematic method to the assessment of coal lands throughout the county. The system was to assess all the coal which happened to lie within purely arbitrary township lines at the same value, irrespective of actual value. Thus the taxing authorities assessed the coal throughout Cumberland Township at $260.00 an acre, although they themselves testified that the front coal in the township was worth $1000.00 an acre and the back coal in the township only half as much, and the trial court so found. The explanation given by the Chairman of the Board was (R. 37) "We assessed the coal in the whole township the same because the coal at the back end of the township sold for twice the assessed valuation". Admittedly, then the back coal (of petitioner) was assessed at 50% of true value and the front coal of others at 25% of true value. This discrimination is expressly recognized by the Trial Court, and yet it was viewed as disclosing no lack of uniformity; to anyone conversant with the principles of equal protection the following conclusions of law of the Trial Court are nothing short of startling:

Conclusions 7 and 8 (R. 301):

"7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township and is not of the same value, and is not quite so accessible to market. The coal along the river and for a considerable area (much more than 250 acres) around the operating plants is worth $1000.00 per acre, and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust.

"8. The Commissioners have not imposed upon appellant in this case, as owners of coal in Cumberland Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River Vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

Under the circumstances it is difficult to conceive of a more arbitrary method of assessment. Manifestly its effect was to systematically undervalue the coal of the owners in the more valuable sections of the township, and transfer a portion of their lawful tax burden to the owners of the less valuable coal.

We submit that this systematic, arbitrary and intentional discrimination brings the case within the protective scope of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as defined by this Honorable Court.

POINT B.

THE ASSESSMENTS IN THESE CASES, AND THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA SUSTAINING THEM, CONTRAVENE THE RIGHTS OF PETITIONERS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, AS INTERPRETED BY THIS COURT.

The decision of the Supreme Court of Pennsylvania appears from the following excerpts from its opinion:

> "Appellants' counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of each owner's property, or, as in the cases before us, higher than the percentage or value, here fifty per cent. uniformly fixed throughout the county.
>
> * * * * * * *
>
> "The fifty per cent, ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are

in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

We contend that while a landowner may not attack the assessment in reliance on a few isolated cases of proportionate undervaluations, on the other hand where, as here, the plan of assessment itself necessarily results in the assessment of the same class of property of different owners being made in widely differing proportions of their respective actual values, the Fourteenth Amendment affords protection.

Sioux City Bridge Company v. Dakota County, 260 U. S. 441, was heard by this Court upon writ of certiorari to the Supreme Court of Nebraska. There the portion of petitioners' bridge in Dakota County, Nebraska, was assessed for taxation at its true value, while real estate and improvements generally in the county were assessed at 55% of their selling value. The Supreme Court of Nebraska held that the remedy of the petitioners was to have the other property which had been assessed below its true value raised rather than to have property assessed at its true value reduced. This Court reversed the judgment of the state court, saying (p. 445):

"The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their

property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of *Taylor v. Louisville & N. R. Co.*, 31 C. C. A., 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in *Greene v. Louisville & Interurban Railroad Co.*, 244 U. S., 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.

In substance and effect, the decision of the Nebraska Supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

Similarly, in *Southern Railway Company v. Watts,* 260 U. S., 519, 526, this Court said:

"The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class, belonging to others. *Raymond v. Chicago Union Traction Co.,* 207 U. S., 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. This may be true although the discrimination is practised through the action of different officials. *Greene v. Louisville & Interurban Railroad Co.,* 244 U. S., 499, 61 L. ed. 1280, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 353, 62 L. ed. 1154, 1156, 38 Sup. Ct. Rep. 495; *Chicago, B. & Q. R. Co. v. Babcock,* 204 U. S., 585, 51 L. ed. 636, 27 Sup. Ct. Rep. 326; *Coulter v. Louisville & N. R. Co.,* 196 U. S., 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342; *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 43 Sup. Ct. Rep. 190."

In *Chicago Great Western Railway Company v. Kendall,* 266 U. S., 94, 98, this Court said:

"The averments of both bills make a case of unjust discrimination against complainants' property in that there is an intentional systematic undervaluation by state officials of Iowa of other tax-

able property of the same class, when the complainants' property is assessed and taxed at a much higher rate. In such cases, the Federal authorities render it clear that the complainants may have the remedy by injunction in equity to prevent the taxation of their property at any higher rate than that imposed upon the property of those in whose favor the discrimination exists. *Cummings v. Merchants' Nat. Bank,* 101 U. S., 153, 160, 25 L. ed. 903, 905; *Greene v. Louisville & Interurban Railroad Co.,* 244 U. S., 499, 516, 61 L. ed. 1280, 1289, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88; *Taylor v. Louisville & N. R. Co.,* 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350. See also *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 445, 67 L. ed. 340, 342, 28 A. L. R. 979, 43 Sup. Ct. Rep. 190, and *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 352, 62 L. ed. 1154, 1155, 38 Sup. Ct. Rep. 495."

These cases clearly demonstrate that any system of assessment which necessarily subjects one owner to taxation upon a substantially higher proportion of the full value of his property than other owners in the taxing district, is unconstitutional. That such is the situation here is strikingly clear, especially in view of the fact that township and school taxes, which constitute by far the greater part of all taxes on the property, are levied upon the assessments here involved, and in such instances each separate township is the taxing district to which the equal protection clause of the Constitution applies. (See appendix, Sections "G" and "H").

We contend that in this case the denial of equal protection to petitioners is occasioned not only by the intentional and arbitrary acts of the constituted agents of the State, but also by the action of the State judiciary

in dismissing petitioners' appeals and affirming the acts of the Board of Revision. As stated in *Brinkerhoff-Faris Trust & Savings Company v. Hill,* 281 U. S. 673, 680: "The federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative, branch of government."

These cases are of very general concern to the owners of coal in Pennsylvania. The trial court found (Finding 24, R. 294) that there has been a depreciation in the value of the Pittsburgh coal in the past six years throughout Greene County, and the testimony was that the development of this coal has ceased and the industry is practically at a standstill (R. 62), and that in the general field coal owners are frequently forced to let their property, or a substantial part of it, be sold for taxes (R. 66). The failure of numerous banking institutions and individuals in these districts is a matter of common knowledge. The Supreme Court of Pennsylvania, in its opinion in these cases, says that "the proper assessment of coal lands has been one of the most perplexing governmental questions with which the courts of this Commonwealth have had to deal". The economic welfare of thousands upon thousands of people in the bituminous coal fields of Pennsylvania and adjoining states requires that this Honorable Court shall properly restrict the taxing authorities in the pursuance of this unlawful system which has already helped to bring about most distressing consequences.

VII.

Conclusion.

It is, therefore, respectfully submitted that the plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners in Greene County, and the assessments in these cases made pursuant to said plan, and the decision of the Supreme Court of Pennsylvania sustaining them, constitute an invasion of the substantive rights of the petitioners to equality of treatment under the Fourteenth Amendment to the Federal Constitution.

Wherefore the decision of the Supreme Court of Pennsylvania in these cases should be reversed, and remanded for further proceedings not inconsistent with the opinion of this Honorable Court.

Respectfully submitted,

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APPENDIX.

A. Real Estate and Personal Property Liable to Taxation for County Purposes.

Act of April 29, 1844, P. L. 486, Section 32, as amended by the *Act of April 28, 1927,* P. L. 491, Section 1. (Pennsylvania Statutes 1928 supplement, sec. 20554):

"Section 32. Be it further enacted, that from and after the passage of this act, all real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves and all other real estate not exempt by law from taxation; * * * and *all* salaries and emoluments of office, all offices, and posts of profit, professions, trades and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all county purposes whatsoever."

B. Triennial Assessment.

Act of April 15, 1834, P. L. 509, Sections 1 and 2 (Pennsylvania Statutes 1920, 20579, 20580):

"Section 1. Be it enacted, etc., That the Commissioners of every county, shall at their first meeting after the general election in every year, proceed to make an estimate of the probable expenses of the county, for the ensuing years.

"Section 2. Within six weeks after the general election, in the year one thousand eight hundred and thirty-four, and in every third year there-

after, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, requiring them to make out and return within thirty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons, residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same to be made in the manner hereinafter directed.

Act of May 15, 1841, P. L. 393, Section 6 (Pennsylvania Statutes, 1920, sec. 20581):

"Section 6. That within four weeks after the next general election, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, who shall proceed to make out and return, within sixty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same, to be made in the manner heretofore provided for in the previous section of this act, said valuation to continue until the next triennial assessment, at which time the assessment shall be made by the assessors and assistant assessors, as prescribed by the provisions of this act."

Act of April 22, 1846, P. L. 486, Section 16 (Pennsylvania Statutes, 1920, sec. 20582):

"Section 16. That the triennial assessments required under existing laws, shall be made in the several counties, in the year one thousand eight

hundred and forty-six, and triennially thereafter, in the manner prescribed by the acts of assembly regulating the same."

C. Property to be Assessed at Actual Value.

Act of May 15, 1841, P. L. 393, Section 4 (Pennsylvania Statutes 1920, sec. 20590):

"Section 4. The third and sixth sections of the act entitled 'An act relating to county rates and levies, and township rates and levies,' passed the fifteenth day of April, one thousand eight hundred and thirty four, and all the laws of this Commonwealth which require the assessors of the several townships, wards, and districts, to fix a uniform standard of value, of objects made taxable by law, be and the same are hereby repealed, and from and after the passage of this act, it shall be the duty of the several assessors and assistant assessors, to assess, rate, and value all objects of taxation, whether for state, county, city district, ward, township, or borough purposes, according to the actual value thereof, and at such rates and prices, for which the same would separately bona fide sell, and on the return of such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected, it shall be lawful for said commissioners, if they believe any property or thing made taxable, has been assesed and valued below its actual value, to raise the same to the actual value thereof, or if the same has been assessed and valued above its actual value, to reduce the same thereto; *Provided,* That in no case the said commissioners shall impose a different rate per centum, on different townships in their

county, but the same shall be equal throughout, and all rates shall be levied on the assessments as returned and corrected."

D. County Board of Revision; Equalization of Assessments.

Act of July 27, 1842, P. L. 441, Section 10 as amended by the *Act of April 29, 1844,* P. L. 486, Section 41 (Pennsylvania Statutes 1920, section 20615):

"Section 10. The county commissioners shall compose a board to be called 'Board of Revision,' of which the county commissioners holding the oldest certificate of election shall be the president. The members of the said board shall each take and subscribe an oath or affirmation, before the president of the court of common pleas for the county, in the following words, to wit: 'I, ..., do swear or affirm that I will faithfully, and to the best of my knowledge and judgment, revise, correct and equalize the valuation of all property taxable by law ..... in ..... county, ... and faithfully perform all the duties of a member of the board of revision for ..... county according to the laws of this commonwealth, which oath shall be deposited in the office of the recorder for the county.' "

Act of July 27, 1842, P. L. 441, section 13 (Pennsylvania Statutes, 1920, section 20620):

"Section 13. That the board of revision in each county shall, on receiving the returns of the assessors, proceed to examine and inquire whether the same have been made in conformity with the laws of this commonwealth, and whether all property to be valued for taxation for state and county pur-

poses, has been valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold. They shall receive and consider the written communication of any taxable inhabitant of the county, relative to any property which such taxable inhabitant shall believe to have been reduced too low, and on the day appointed for determining whether any property has been reduced too low, or reduce the same if too high, they shall proceed to raise the price or valuation of any property which they shall believe to have been reduced too low, and if they cannot, on the day appointed, revise, raise and equalize, the valuation of all property which they shall believe to have been reduced too low, they may adjourn from day to day until the whole of such valuation shall have been revised, raised and equalized."

Act of July 27, 1842, P. L. 441, section 14 (Pennsylvania Statutes, 1920, section 20621):

"Section 14. That when the whole of the valuation of the assessor shall have been raised, revised and equalized, in conformity with the foregoing section, the same proceedings shall be had in reference to notice, appeals and corrections, which are now had by the laws of this Commonwealth, excepting only that the board of revision, instead of the county commissioners, shall hear and decide upon all appeals."

E. Appeal to Courts of Common Pleas.

Act of April 19, 1889, P. L. 37, Section 1, (Pennsylvania Statutes 1920, section 20632):

"Section 1. Any owner of real estate or taxable property in this commonwealth who may feel aggrieved by the last or any future assessment or valuation of his real estate or taxable property, may appeal from the decision of the county commissioners, or board of revision and appeal, to the court of common pleas of the county within which such property is situated, and for that purpose may present to said court or file in the prothonotary's office within sixty days after the county commissioners or board of revision and appeal have held the appeals provided for by law, and acted on the said assessments and valuations, a petition signed by him, his agent or attorney, setting forth the facts of the case, and thereupon the said court shall proceed at the earliest convenient time to be by them appointed, of which notice shall be given to the county commissioners of the proper county or to the board of revision and appeal of the proper city, to hear the said appeal and the proofs in the case, and to make such orders and decrees touching the matter complained of as to the judges of said court may seem just and equitable, having due regard to the valuation and assessment made of other real estate, in such county or city; the costs of the appeal and hearing to be apportioned or paid as the court may direct: Provided, however, That the said appeal shall not prevent the collection of the taxes complained of, but in case the same shall be reduced then the excess shall be returned to person or persons who shall have paid the same.

F. Appeal to Appellate Courts.

Act of June 26, 1901, P. L. 601, Section 1, (Pennsylvania Statutes 1920, section 20634):

"Section 1. Any owner of real estate or taxable property in this commonwealth may appeal from the judgment, order or decree of any court of common pleas, in any matter affecting the assessment of taxes upon his property, to the supreme or superior court, in the same manner as appeals are taken in other cases to the said supreme or superior court: Provided, however, That the said appeal shall not prevent the collection of the taxes complained of; but in case the same shall be reduced, then the excess shall be returned to the person or persons who shall have paid the same."

G. The Levy of Township Taxes as Applicable to Greene County.

Act of May 4, 1927, amending Section 421 of the Act of July 14, 1917, P. L. 840 (Pennsylvania Statutes, 1928 Supplement, Sections 6970, 6971):

"SECTION 421. The board of township supervisors may levy taxes upon all property and upon all occupations within the township made taxable for township purposes, as ascertained by the last adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified, to wit:

One. An annual road tax, not later than the fourth Monday of March of each year, not exceeding ten mills, unless the board of supervisors by unanimous action shall, upon due cause shown, petition the court of quarter sessions, in which case the court may order a greater rate than ten mills, but not exceeding ten additional mills, to be levied. Such annual road tax shall include all levies for

road purposes and for the payment of bonds and certificates of indebtedness issued and all other debts incurred for road purposes. Not less than ten per centum of the annual road tax shall be set aside by the respective townships and used for the payment of existing indebtedness incurred for road purposes, for the payment of which indebtedness no provision has been made. All road taxes shall be collected in cash.

Two. A tax for the purpose of building and maintaining a lockup, after obtaining the assent of the electors of the township in the manner provided in section twelve hundred and fifty of this act.

Three. Upon the receipt of a petition of a majority of the owners of real estate of the township requesting it, an annual tax, not exceeding five mills, for the purpose of lighting the streets and highways in the manner provided in section three hundred and eighty-six, clause one of this act, and of defraying the cost, charges and expenses thereof.

Four. An annual tax so long as necessary, not exceeding fifty per centum of the rate of assessment for road purposes, for the purpose of procuring a lot and erecting a building thereon for a townhouse, and for the payment of indebtedness incurred in connection therewith: Provided, The total indebtedness for the payment of which any such tax shall be levied shall not exceed one-half of one per centum of the assessed value of real estate in the township.

Five. A tax for the purpose of purchasing and maintaining fire apparatus and to provide a suitable place for the housing of the same; but no appropriation to any one or more fire companies from such taxes shall, for the first appropriation, exceed five thousand dollars for the purchase of equipment, nor shall any appropriation in any year for the

purpose of maintenance of any one or more fire companies exceed one thousand dollars.

The taxes authorized to be levied by this section shall be levied upon the last adjusted valuation for county purposes, which valuation shall be furnished to the township supervisors by the county commissioners. If any further adjustment of valuation is made by the county commissioners, after any tax is so levied and before said tax is payable, such adjusted valuation shall be certified to the township supervisors and to the township collector of taxes by the commissioners, and the tax shall be collected on the basis of such adjusted valuation.

This article does not include the levy of any taxes upon particular districts, or parts of any township, for particular purposes."

H. The Levy of School Taxes as Applicable to Greene County.

Act of April 26, 1923, P. L. 102, Section 1, amending Sections 540 and 541 of the Act of May 18, 1911, P. L. 309 (Pennsylvania Statutes, 1928 Supplement, Sections 4799, 4800):

"SECTION 540. In all school districts of the third class, excepting school districts of that class which are located wholly within the boundary lines of cities of the third class and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, as aforesaid, and in all school districts of the fourth class in this Commonwealth, the school taxes shall be levied and assessed upon all the property upon which the county taxes are levied and assessed.

* * * * * * *

"SECTION 541. In order to enable the board of school directors in each district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same in so located, as aforesaid, and in each district of the fourth class in this Commonwealth, to assess and levy the necessary school taxes required by such district each year, the county commissioners in each county shall, on or before the first day of April in each year, at the expense of the county, furnish to each school district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, as aforesaid, and to each district of the fourth class, therein, for its use, to be retained by it, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and residents or inhabitants made taxable for county purposes in such school district, stating the name of each taxable, and the valuation, description, and kind of property, and a list of the residents or inhabitants assessed; all of which real estate, personal property, and residents or inhabitants are hereby made taxable for school purposes in each school district of the third and fourth class. * * *"